

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ALLERGAN USA, INC., ALLERGAN HOLDINGS
UNLIMITED COMPANY and EDEN BIODESIGN,
LLC,

Plaintiffs,
v.

MSN LABORATORIES PRIVATE LIMITED, MSN
PHARMACEUTICALS, INC., and SUN
PHARMACEUTICAL INDUSTRIES LIMITED,

Defendants.

C.A. No. 1:19-cv-01727-RGA
(Consolidated)

**DEFENDANTS' MOTION TO STRIKE DR. BERKLAND'S
TRIAL TESTIMONY NOT PREVIOUSLY DISCLOSED**

Pursuant to the Court's instruction at trial (Trial Transcript ("Tr.") 381:6-10), Defendants MSN Laboratories Private Limited, MSN Pharmaceuticals Inc., and Sun Pharmaceutical Industries Limited (collectively, "Defendants") hereby move to strike portions of Cory Berkland, Ph.D.'s trial testimony relating to an alternative definition of "preformulation" that was not previously disclosed during expert discovery. Rule 26(a)(2)(B) requires that all expert testimony be accompanied by "a complete statement of all opinions the witness will express and the basis and reasons for them." But Dr. Berkland admitted he never previously disclosed such an opinion. *See* Tr. 430:12-23 (Q: "You did not offer an opinion like that; correct?" A: "I did not use that word in my reports that I recall"); *see also Forest Lab'ys, Inc. v. Ivax Pharms., Inc.*, 237 F.R.D. 106, 113 (D. Del. 2006) (striking testimony where party "concede[d] that this testimony was not in [the witness's] expert report"). Therefore, Defendants move to strike the testimony found at Tr. 378:9-16; 379:24-380:12; 382:4-383:6; 412:13-413:6; 428:25-429:3; 429:8-431:12.

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Dated: December 22, 2022